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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,608	08/22/2003	Yoshio Sugimoto	2895-0138P	8586

2292 7590 05/25/2005

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EXAMINER

THEXTON, MATTHEW

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,608

Applicant(s)

SUGIMOTO ET AL.

Examiner

Matthew A. Thexton

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1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date one sheet.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6838510 in view of Baba et al. (JP 01-40566-A, also known as JP 64-40566-A, as evidenced by the USPTO obtained translation). The difference between the present claims and those of the '510 reference is the further inclusion of aluminum flake pigment which has been surface coated with a polymer containing acrylic acid, an acrylic acid ester, epoxylated polybutadiene, and divinylbenzene. Reference '566 discloses aluminum flakes having a resinous coating formed from epoxidized 1,2-polybutadiene, trimethylolpropane triacrylate, acrylic acid, and divinylbenzene (example) which are suggested for use in metallic paint and filler of synthetic resin compositions. Reference '510 contemplates pigments for its molding composition (column 8, lines 22-29). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of

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the invention to have employed the specific pigment of reference '566 in the mixtures of reference '510 since such is broadly suggested and one would have a reasonable expectation of suitability.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hashizume (US 6541540-B2) discloses aluminum flakes which are coated by polymer of multiple monomers (e.g. example 1) for use in coatings. There is no disclosure or suggestion to employ these flakes in polypropylene based mixtures as required by Applicant's claims.

Banba (US 4434009) discloses aluminum flakes which are coated by polymer of multiple monomers for use in paints. There is no disclosure or suggestion to employ these flakes in polypropylene based mixtures as required by Applicant's claims.

Camelon et al. (US 3932320) discloses aluminum flakes which are coated by thermoplastic polymer of multiple monomers for use in paints. There is no disclosure or suggestion to employ these flakes in polypropylene based mixtures as required by Applicant's claims.

Higashi et al. (US 6169144-B1) was cited in the corresponding EP 1391483-A1.

Matsumura et al. (US 5856400-A) was cited in the corresponding EP 1391483-A1.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew A. Thexton whose telephone number is 571-272-1125. The examiner can normally be reached on Monday-Friday, 9:30 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasudevan S. Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. A. Thexton

Matthew A. Thexton
Primary Examiner
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